

Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED
JUN 27 2007

In the Matter of)
)
2000 Biennial Review-Review of Policies and)
Rules Concerning Unauthorized Changes of) CC Docket No. 00-257
Consumers' Long Distance Carriers)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the) CC Docket No. 94-129
Telecommunications Act of 1996)
)
Verizon California, Inc.)
Petition for Waiver)
)

FCC MAIL ROOM

ORDER

Adopted: June 22, 2007

Released: June 22, 2007

By the Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we grant Verizon California, Inc. (Verizon) a limited waiver of the 30-day advance notification requirements contained in 47 C.F.R. § 64.1120(e). In 2001, the Commission instituted streamlined procedures for compliance with the authorization and verification requirements of our rules and of section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, in situations involving the carrier-to-carrier sale or transfer of subscriber bases.¹ We find that it is in the public interest to grant Verizon a limited waiver of these rules, to the extent necessary to enable Verizon to become the presubscribed provider of local service to customers of a competitive local exchange carrier that is ceasing to provide service.

II. BACKGROUND

2. In 1998, the Commission adopted rules to implement section 258 of the 1996 Act, which expanded the Commission's existing authority to deter and punish "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications

¹ See 2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129 (*Streamlining Order*), 16 FCC Rcd 11218 (2001), adopting 47 C.F.R. § 64.1120(e). See also 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

service.² Pursuant to section 258 and the Commission's rules, carriers are barred from changing a customer's preferred carrier without first complying with the Commission's procedures.³

3. According to the streamlined procedures adopted by the Commission, carriers need not obtain individual subscriber authorization and verification for carrier changes associated with the carrier-to-carrier sale or transfer of a subscriber base, provided that, not later than 30 days before the planned carrier change, the acquiring carrier notifies the Commission, in writing, of its intention to acquire the subscriber base and certifies that it will comply with the procedures set forth in section 64.1120(e) of the Commission's rules, including providing 30-day advance written notice to all affected subscribers.⁴ These rules are designed to ensure that affected subscribers have adequate information about the carrier change in advance, that they are not financially harmed by the change, and that they will experience a seamless transition of service from their original carrier to the acquiring carrier.⁵ This self-certification process also provides the Commission with information it needs to fulfill its consumer protection obligations.⁶

4. On June 5, 2007, Verizon filed with the Commission a Petition for Waiver asking the Commission to waive the 30-day advance notice requirements of sections 64.1120(e)(1) and (e)(3) of the rules to permit Verizon to give notice to certain Vycera Communications, Inc. (Vycera) customers and to the Commission less than 30 days prior to the transfer of the customers from Vycera to Verizon.⁷

III. DISCUSSION

5. Generally the Commission's rules may be waived for good cause shown.⁸ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁹ Waiver of the

² 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116 (rel. May 23, 2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

³ *Id.*

⁴ 47 C.F.R. § 64.1120(e).

⁵ See *Streamlining Order* at para. 10, 16 FCC Rcd at 11222.

⁶ *Id.*

⁷ Petition for Waiver filed with the Commission by Verizon in CC Docket Nos. 94-129 and 00-257 on June 5, 2007 (*Petition*).

⁸ 47 C.F.R. § 1.3.

Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹² The Commission specified in the *Streamlining Order* that instances in which it is impossible to comply precisely with the streamlined procedures will be resolved on a case-by-case basis.¹³

6. We find that Verizon has demonstrated that good cause exists to justify a limited waiver of the Commission's requirements to the extent necessary to enable Verizon to provide notice to the Commission and the affected Vycera customers less than 30 days prior to the transfer of the customers to Verizon. According to Verizon, Vycera indicated that it is exiting the market and intends to file for bankruptcy protection, potentially leaving Vycera's customers without service.¹⁴ The Commission subsequently learned that, in fact, Vycera filed for Chapter 7 Bankruptcy protection.¹⁵ Verizon also states that the California Public Utilities Commission (CaPUC) staff has asked Verizon to become the carrier for approximately 2500 of Vycera's customers in California,¹⁶ and that nearly all of the affected customers are Lifeline customers.¹⁷ Verizon states that it has not yet sent advance notice to the affected customers as required by section 64.1120(e)(3) of our rules, but that it will contact the affected customers as soon as possible.¹⁸

7. Under the Commission's rules, no later than 30 days prior to the transfer, an acquiring carrier must self-certify its compliance with the required procedures to the Commission and must give the affected subscribers notice of, and certain information about, the transfer.¹⁹ Given the special circumstances Verizon has described, however, compliance with the 30-day advance notice requirement could potentially result in the loss of local service for Vycera customers during the 30-day period. Moreover, Verizon states that CaPUC staff has asked Verizon to begin transferring Vycera's customers to Verizon as soon as possible.²⁰ As noted above, the streamlined procedures were designed to permit affected subscribers to experience a "seamless transition of service from the original carrier to the

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹⁰ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *WAIT Radio*, 418 F.2d at 1157.

¹³ *Streamlining Order* at para. 20, 16 FCC Rcd at 11226.

¹⁴ *See Petition* at 2.

¹⁵ *See* Voluntary Petition for Relief, Case Number: 07-03121-LA7, Bankr. S.D. Cal., filed June 15, 2007.

¹⁶ *See Petition* at 2. *See also* e-mail from Richard T. Ellis, Director - Federal Regulatory Advocacy, Verizon, to David Marks, Attorney Advisor, Consumer & Governmental Affairs Bureau, dated June 6, 2007.

¹⁷ *See id.* at 1. Lifeline service is a retail local service offering that is available only to qualifying low-income consumers; these consumers pay reduced charges as a result of application of the Lifeline support amount described in 47 C.F.R. § 54.403. Lifeline services and functionalities are enumerated in § 54.101 (a)(1) through (a)(9). *See* 47 C.F.R. § 54.401.

¹⁸ *See id.*

¹⁹ 47 C.F.R. §§ 64.1120(e)(1) & (e)(3).

²⁰ *See Petition* at 2.

acquiring carrier.”²¹ We find that, in the special circumstances described by Verizon, waiver of the 30-day advance notice requirement would more effectively achieve this goal and would therefore serve the public interest. We find that the affected subscribers are unlikely to suffer harm from receiving less than 30 days’ notice of the transfer, and that any such harms would be outweighed by the benefits of a seamless transfer of service and the benefits to Lifeline customers who otherwise might be without vital communications services, including emergency 911 services.

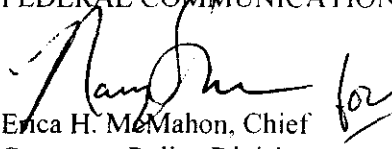
8. For the foregoing reasons, we grant Verizon a waiver of the 30-day advance notification requirements of 47 C.F.R. §§ 64.1120(e)(1) and (e)(3) for the limited purposes described above. The grant of this waiver is conditioned upon Verizon providing customer notification and certification to the Commission that complies with all requirements of section 64.1120(e), except that the 30-day timeframes for doing so are waived herein.

IV. ORDERING CLAUSES

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.141, 0.361, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, the waiver request filed by Verizon California, Inc., on June 5, 2007, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION


Erica H. McMahon, Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

²¹ *Streamlining Order* at para. 10, 16 FCC Rcd at 11222.